

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTHONY JUNIOR ALMAGUER,

Defendant.

MEMORANDUM DECISION AND ORDER
DENYING MOTION FOR A FINAL
ORDER OF FORFEITURE

Case No. 2:20-cr-00273-JNP

District Judge Jill N. Parrish

Before the court is the Government's motion for a final order of forfeiture. ECF No. 43.

The court DENIES the motion for three reasons.

First, the government has not published notice for the 8 rounds of Hornandy ammunition CAL: 9 added in the Amended Preliminary Order of Forfeiture. *See* ECF No. 41. Accordingly, this portion of the government's proposed final order of forfeiture is not ripe for a final order.

Second, a third party has thirty days from "final publication of notice" to assert a legal interest in the property and request an ancillary proceeding. 21 U.S.C. § 853(n)(2). The government published the requisite notice for the items listed in the Preliminary Order of Forfeiture from May 19, 2021 to June 17, 2021. Because thirty days has not elapsed from June 17, 2021—the date of the final publication of notice—a third party still has time to assert a claim to the property contained in that notice.

Third, a formal final notice of forfeiture will likely be unnecessary in this case. Under Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure, "[i]f no third party files a timely petition, the preliminary order becomes the final order of forfeiture if the court finds that the defendant . . .

had an interest in the property that is forfeitable under the applicable statute.” Both the Preliminary Order of Forfeiture and the Amended Preliminary Order of Forfeiture contain findings that the defendant had an interest in the property listed in those documents. Thus, if no third party timely petitions for an ancillary proceeding, the preliminary order of forfeiture will automatically become the final order of forfeiture. If a timely petition is filed, the court can enter a formal final order of forfeiture after the ancillary proceeding.

DATED June 23, 2021.

BY THE COURT



Jill N. Parrish
United States District Court Judge